

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
JOSHUA WILES,

Plaintiff,

-against-

INDEX #13-CV-2898

THE CITY OF NEW YORK, A MUNICIPAL ENTITY, NEW YORK  
CITY POLICE OFFICER PASTULA, NEW YORK CITY POLICE  
OFFICERS "JOHN DOE 1-10",

Defendants.  
-----x

MICHAEL A. CARDOZO, ESQ.  
CORPORATION COUNSEL  
100 Church Street, 4th Floor  
New York, New York 10007

DATE: April 30, 2014  
9:45 A.M.

EXAMINATION BEFORE TRIAL of the  
Defendant, THE CITY OF NEW YORK, A MUNICIPAL  
ENTITY by the Witness STEVEN ANGER, taken by  
the Plaintiff, pursuant to Notice, before  
KENNETH KONGTHONG, a Notary Public of  
the State of New York.

1           Q: I would like you to be a little more  
2 specific as to the conduct that the Plaintiff was  
3 engaged in that you have characterized as a  
4 disorderly conduct.

5           MR. LUCAS: Note my objection. So  
6 what was he doing?

7           MR. THOMPSON: Yes. I mean that is --

8           MR. LUCAS: Okay.

9           MR. THOMPSON: -- is what I'm trying  
10 to ask.

11          A: Okay.

12          Q: What was he doing?

13          A: He's obstructing the sidewalk and  
14 pedestrians with other people. Eventually, sitting  
15 down on the sidewalk, and in addition asked to  
16 clear the sidewalk, leave the sidewalk area and did  
17 not do that after a number of warnings, police  
18 warnings.

19          Q: Other than the conduct that you have  
20 just described, did the Plaintiff do anything else  
21 that justified his arrest?

22          A: There was another part where he was  
23 yelling, "Take the steps. Take the steps." Who  
24 was -- I believe, was at the point of inciting to  
25 riot.

1 Q: I just want to be clear, when you  
2 testified that he was yelling, "Take the steps.  
3 Take the steps." Are those the exact words that he  
4 was yelling?

5 A: I believe so.

6 Q: Is your knowledge that the Plaintiff was  
7 yelling, "Take the steps, take the steps," come  
8 from your own personal knowledge or does it come  
9 from some other source?

10 A: It comes from another source.

11 Q: What other source does it come from?

12 A: A videotape that I reviewed.

13 Q: And the videotape that you reviewed  
14 depicts the Plaintiff saying, "Take the steps"?

15 A: Yes.

16 Q: When the Plaintiff was saying, "Take the  
17 steps, take the steps," who, if anyone was he  
18 addressing?

19 A: There was a good number people that are  
20 around him and he was shouting that and turning  
21 toward them and also turning toward the steps.

22 Q: What steps are you referring to?

23 A: 60 Centre Street.

24 Q: Did the Plaintiff shouting "Take the  
25 steps, take the steps," as you've narrated, justify

1 his arrest?

2 MR. LUCAS: Note my objection. You  
3 can answer.

4 A: Yes, I believe so.

5 Q: What crime or offense was the Plaintiff  
6 committing when he engaged in that conduct?

7 A: Inciting to riot.

8 Q: What are the elements of inciting to  
9 riot?

10 A: I believe it's ten or more persons  
11 advocating tumultuous -- I have a tough time saying  
12 that word, or violent behavior.

13 Q: Was Joshua Wiles advocating a violent  
14 behavior?

15 MR. LUCAS: Note my objection.

16 A: I believe he was.

17 Q: What kind of violence was he advocating?

18 A: By his statements to -- some actions to  
19 -- to get onto the steps at 60 Centre Street which  
20 was closed off by police officers.

21 Q: So it is the City's contention that  
22 Joshua Wiles was asking those present to storm the  
23 steps. Is that correct?

24 A: Yes.

25 Q: When Joshua Wiles said "Take the steps,

1 take the steps," was he addressing the members of  
2 service that were present?

3 A: I believe he was not addressing them.

4 Q: At that point in time, did Joshua Wiles  
5 say anything that was directed towards the members  
6 of service who were present?

7 A: I don't believe so, no.

8 Q: When the Plaintiff said, "Take the  
9 steps, take the steps," as you have narrated, was  
10 there any other action that he was advocating other  
11 than storming the steps?

12 MR. LUCAS: Note my objection. You  
13 can answer.

14 A: Not that I'm aware of, no.

15 Q: At that point in time, other than saying  
16 "Take the steps, take the steps," was the Plaintiff  
17 engaged in any other conduct that would justify his  
18 arrest?

19 MR. LUCAS: Note my objection. You  
20 can answer.

21 A: At that immediate time or --

22 Q: At that immediate time.

23 A: I believe it was this time -- a  
24 disorderly conduct at that time.

25 Q: What conduct was he engaged in that was

1           can answer.

2           A:    I don't know.

3           Q:    In that period of time before he said  
4    "Take the steps," where on the sidewalk was the  
5    Plaintiff located?

6           A:    I believe along the front of the steps  
7    at 60 Centre Street.

8           Q:    Other than along the steps in front of  
9    60 Centre Street, was the Plaintiff anywhere else  
10   in that vicinity prior to saying, "Take the steps"?

11           MR. LUCAS:   Note my objection.  You  
12           can answer.

13           A:    Not that I know of, no.

14           Q:    How long was the Plaintiff saying, "Take  
15   the steps"?

16           A:    Over a short time.  I'd say a minute or  
17   so.

18           Q:    And how many times did he repeat that  
19   phrase?

20           A:    A couple of times.

21           Q:    Other than that phrase, did he say  
22   anything else?

23           MR. LUCAS:   Note my objection.  You  
24           can answer.

25           A:    I don't recall anything else.



1 Q: How much time elapsed between the time  
2 that the Plaintiff was saying, "Take the steps,  
3 take the steps," and his arrest?

4 A: I would say it's a couple of minutes,  
5 maybe up to five minutes.

6 Q: At the time that the Plaintiff was  
7 saying "Take the steps, take the steps," were there  
8 any police officers in the area?

9 MR. LUCAS: Note my objection. You  
10 can answer.

11 A: Yes.

12 Q: How far away was the nearest member of  
13 service?

14 A: I would say within a few feet, maybe  
15 five to ten feet.

16 Q: Where was that member of service  
17 located? On the steps, in the sidewalk or  
18 somewhere else?

19 A: At the foot of the steps.

20 Q: Were there any other members of service  
21 at the foot of the steps in the vicinity of the  
22 Plaintiff at the time that he was saying "Take the  
23 steps"?

24 A: Yes.

25 Q: Approximately how many?

1           A:    I would say somewhere between five and  
2           ten.

3           Q:    Were these members of service close  
4           enough to the Plaintiff to have arrested him at  
5           that time?

6           MR. LUCAS:   Note my objection.  You  
7           can answer.

8           A:    Yes.

9           Q:    Were they close enough to the Plaintiff  
10          to have prevented him from attempting to incite a  
11          riot?

12          MR. LUCAS:   Note my objection.

13          A:    Could you repeat that, sir?

14          Q:    Were these members of service close  
15          enough to the Plaintiff at the time he was saying  
16          "Take the steps, take the steps" to prevent him  
17          from attempting to incite a riot?

18          MR. LUCAS:   Objection.  You can  
19          answer.

20          A:    I don't -- I don't completely understand  
21          the question because inciting to riot is verbal at  
22          the time, so I don't know how they would prevent  
23          him from doing that.

24          Q:    Did the police officers that you  
25          identified is being close to him at that moment in



1 time do anything to attempt to stop him from  
2 engaging in the conduct of inciting to riot?

3 A: No.

4 Q: Did any of the officers tell him to stop  
5 saying what he was saying?

6 MR. LUCAS: Objection. You can  
7 answer.

8 A: I don't believe so.

9 Q: Who is the incident commander at that  
10 location on November 5, 2011?

11 A: Myself.

12 Q: What is an incident commander?

13 A: The person in charge of the police  
14 resources at a particular event or location.

15 Q: And as a person in charge of the police  
16 resources in that location, what are the duties of  
17 an incident commander?

18 A: To oversee the deployment of the -- the  
19 officers in an event or location.

20 Q: And what does an incident commander  
21 typically do in order to oversee the deployment of  
22 officers?

23 A: He assesses the situation that he -- of  
24 -- of the event, and then deploys his resources to  
25 adequately police that -- that event.

1 Q: Okay. When you used the word "deploy,"  
2 does that include obtaining sufficient personnel to  
3 police a particular event?

4 MR. LUCAS: Note my objection. At  
5 what point?

6 Q: Well, let the question stand if you  
7 understand it. If you don't understand it, let me  
8 know.

9 A: Okay. Can you repeat the question?  
10 I'll have it repeated.

11 Q: I will rephrase the question. You  
12 referenced the fact that an incident commander  
13 deploys officers. Does that mean that the incident  
14 commander tells officers where to stand at a  
15 location?

16 A: Sometimes, yes.

17 Q: Does that mean that the incident  
18 commander tells officers to form police lines at  
19 the location, for example?

20 A: Yes.

21 Q: Is the incident commander involved in  
22 ensuring that there are sufficient members of  
23 service at a location in order to police the event?

24 MR. LUCAS: Objection. You can  
25 answer.

1           A: Prior to an event, yes. And during the  
2 event, we might have to have additional resources  
3 to adequately police that event whenever they ask  
4 for additional resources.

5           Q: At a particular location or incident, is  
6 the incident commander the person in charge?

7           A: Overall, yes.

8           Q: Does the incident commander report to  
9 anyone else?

10          A: When? At the event?

11          Q: Well, let us speed it up a bit.

12          A: Okay.

13          Q: Let us focus for a moment at the scene  
14 of an event as it is ongoing. Does the incident  
15 commander report to anyone else who is present at  
16 that location?

17          A: Not normally, no. The incident  
18 commander is the usually the highest person,  
19 highest ranking person at the scene to -- to deploy  
20 officers or to manage that event.

21          Q: Focusing on November 5, 2011, were you  
22 the highest ranking person at the scene in the  
23 vicinity of 60 Centre Street?

24          A: Yes.

25          Q: On November 5, 2011, were you reporting

1 to any other member of service who was not present  
2 at the scene?

3 MR. LUCAS: Note my objection. At  
4 what time?

5 MR. THOMPSON: During the course of  
6 the event.

7 MR. LUCAS: You can answer.

8 A: That I don't recall.

9 Q: Did you report to anyone after the  
10 event?

11 A: I don't believe so, no.

12 Q: At the time that the Plaintiff was at  
13 the location or the vicinity of 60 Centre Street,  
14 was he engaged in speech activity?

15 MR. LUCAS: Note my objection. You  
16 can answer.

17 A: And how would you describe speech  
18 activity -- yes.

19 Q: At this event, was the group of people  
20 that was present in the vicinity of 60 Centre  
21 Street there for the purpose of engaging in speech  
22 activity?

23 MR. LUCAS: Objection. You can  
24 answer.

25 A: I don't really know what their -- their

1 you referred to the beginning. When exactly marks  
2 the beginning of the event as you're referring to  
3 it?

4 A: The arrival of marches in the Foley  
5 Square area.

6 Q: Marches that you're referring to is the  
7 same being called down were at some point assembled  
8 in front of 60 Centre Street itself?

9 A: Yes.

10 Q: Where did these marches come from?

11 A: Zuccotti Park.

12 Q: What route did they take to come from  
13 Zuccotti Park to Foley Square?

14 A: North on Broadway -- I believe is on the  
15 west side to Duane Street going east on Duane  
16 Street into Foley Square.

17 Q: Did you accompany the march?

18 A: Yes.

19 Q: Did you begin to accompany the march at  
20 Zuccotti Park or somewhere else?

21 A: I believe it's at Zuccotti Park.

22 Q: Was Deputy Chief Shea accompanied by a  
23 detail of officers or anyone else?

24 A: I don't believe so. No.

25 Q: Do you know when Deputy Chief Shea left

1           A:    I believe so.  Yes.

2           Q:    Other than commanding that group of  
3 officers, did Captain Dowling play any other role  
4 in the incident of November 5, 2011?

5           MR. LUCAS:  Note my objection.

6           A:    I believe he deployed some officers  
7 along the steps of 60 Centre Street.

8           Q:    When you say deployed officers along the  
9 steps of 60 Centre Street, where specifically were  
10 these officers placed?

11          A:    At the bottom steps of 60 Centre Street.

12          Q:    And what was their purpose of being  
13 deployed there?

14          MR. LUCAS:  Note my objection.  You  
15 can answer.

16          A:    To prevent people from walking up the  
17 steps of 60 Centre Street.

18          Q:    What was the purpose of preventing  
19 people from walking up the steps of 60 Centre  
20 Street?

21          A:    To protect the courthouse.

22          Q:    What were these officers protecting the  
23 courthouse from?

24          A:    From all events that we have over my  
25 experience in Foley Square, we've always protected



1 the topic of revisiting the past, I  
2 just want to make sure that it is clear  
3 on the record that you know, I object  
4 to assertions of privilege that have  
5 been made to all of them and you know,  
6 although I'm allowing obviously Counsel  
7 to direct the Witness not to answer, I  
8 reserve the right to, you know, dispute  
9 any and all such objections at a later  
10 time.

11 MR. LUCAS: Noted.

12 MR. THOMPSON: Great.

13 Q: All right. So Sergeant Walker, did he  
14 play any role in arresting the Plaintiff other than  
15 processing the arrest?

16 A: Officer Walker -- you said Sergeant  
17 Walker.

18 Q: I believe his rank is Sergeant. I could  
19 be wrong, but the officer that you referred to  
20 previously when you --

21 A: I believe it's Police Officer Walker.

22 Q: That officer that you referred to as  
23 being involved in the processing the arrest, did  
24 that officer play any role in making the arrest?

25 A: I don't know -- excuse me. I don't

1 know.

2 Q: Can you think of a way that you could  
3 find out whether Officer Walker played a role in  
4 the arrest?

5 MR. LUCAS: Objection. You can  
6 answer.

7 A: I would have to speak to Officer Walker.

8 Q: Is there anyone else you could speak to?

9 A: Officer McNamara.

10 Q: All right. So did you give any orders  
11 while you were at the scene of the demonstration at  
12 60 Centre Street?

13 MR. LUCAS: Objection. You can  
14 answer.

15 A: Yes.

16 Q: To whom did you give orders?

17 A: I don't recall.

18 Q: Do you recall what the nature of the  
19 orders that you gave was?

20 A: Yes -- excuse me. Yes.

21 Q: What was the nature of the order or  
22 orders that you gave?

23 A: To have an announcement made regarding --  
24 - through the bullhorn to have an announcement to  
25 the people on the sidewalk that they were

1 obstructing the sidewalk, they were violating  
2 disorderly conduct and asked them to leave the area  
3 or they'd be subject to arrest.

4 Q: Who did you give that order to?

5 A: I don't recall whom I gave it to.

6 Q: Do you recall that person's rank?

7 A: I would say a captain or a deputy  
8 inspector.

9 Q: Was that order carried out?

10 A: Yes.

11 Q: Was it carried out by the person to whom  
12 you gave the order or someone else?

13 A: Someone else.

14 Q: Who carried out the order?

15 A: I believe it was one of the lieutenants  
16 from the taskforce.

17 Q: Do you know that lieutenant's name?

18 A: No, I don't.

19 Q: Could you describe the lieutenant.

20 A: Male, White.

21 Q: More specific than that.

22 A: Wearing a police uniform.

23 Q: All right.

24 A: We will track him down.

25 Q: What does the Plaintiff look like?

1 answer.

2 A: No.

3 Q: What time was the Plaintiff's arrest  
4 made?

5 A: I don't know the exact time.

6 Q: Did the police have the authority to  
7 close a public sidewalk to pedestrian traffic?

8 MR. LUCAS: Objection. You can  
9 answer.

10 A: Yes.

11 Q: What is the basis of that?

12 A: Safety concerns, hazards.

13 Q: Were there any safety concerns at the  
14 location in front 60 Centre Street on November 5,  
15 2011 that resulted in closing the sidewalk?

16 A: No.

17 Q: All right.

18 A: If you can just -- can we go back to  
19 that question? 'Cause now I'm thinking -- could  
20 you just read it again or rephrase it? Regarding  
21 what your -- the question.

22 MR. THOMPSON: Could you read it back?  
23 (Whereupon the recording was played back.)

24 A: Now, the question was closing the  
25 sidewalk, by -- by who? Because my -- there was a

1 safety concern that I couldn't get with the  
2 sidewalk closed, if there was an emergency inside  
3 the Court of getting personnel either fire or EMS  
4 or police inside because the sidewalk was closed by  
5 the demonstrators there.

6 Q: Okay. Other than that, was there any  
7 other hazard that you were concerned about?

8 A: That or somebody that might get injured  
9 in the crowd that might need help too. We've had  
10 it where demonstrators or people inside the crowd  
11 might get injured or sick and need assistance.

12 Q: And as a result of that, the sidewalk  
13 was closed?

14 A: No, it --

15 MR. LUCAS: Objection. Yes, you can  
16 answer.

17 A: It creates a hazard, by them closing the  
18 sidewalk and not able to get resources there.  
19 That's --

20 Q: I see. I would like to provide the  
21 Witness with Plaintiff's Exhibit #39. And the  
22 first question would be, have you ever seen that  
23 document before.

24 A: Yes.

25 Q: When did you see that document, other